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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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In re Applications for Consent
to the Transfer of Control of Licenses
and Section 214 Authorizations from
Ameritech Corporation, Transferor, to
SBC Communications Inc., Transferee

CC Docket No. 98-141

APPLICANTS' RESPONSE TO COMMENTS OF
MCI TELECOMMUNICATIONS CORPORATION
ON PROPOSED PROTECTIVE ORDER

Applicants SBC Communications Inc. ("SBC") and Ameritech Corporation ("Ameritech") hereby respond to the Comments of MCI Telecommunications Corporation (the "MCI Comments") concerning the proposed protective order that Applicants submitted in connection with their applications to transfer control of Ameritech's FCC authorizations to SBC. That order is the very same protective order approved by the Commission for the MCI/WorldCom merger.

MCI is the only party that has objected to the proposed order.¹ Its sole objection is that ¶ 3(iii) of the proposed protective order prohibits the disclosure of confidential information to in-house consultants or experts. MCI asserts that it was planning to use in-house economists in preparing its comments on the proposed merger, and it alleges that there is no need in this case to limit disclosure to outside experts.

¹ AT&T has filed a statement that it does not object to the proposed order.

This objection is, to say the least, disingenuous since MCI took precisely the opposite position only three months ago in the proceeding involving its proposed merger with WorldCom. In response to the objections of some parties to MCI's request that only outside experts be allowed access to confidential information, MCI insisted that "in-house economists and regulatory analysts, are in constant contact with their co-employees, day in and day out, including those directly or indirectly engaged in marketing, strategic planning, pricing, promotional campaigns and rule and tariff preparation."² Indeed, MCI suggested that no protective order could possibly provide sufficient safeguards if confidential information were to be disclosed to in-house economists:

The restriction is necessary because in-house personnel with access to competitors' trade secrets are placed in an inherently impossible position. They would be asked to create a wall in the middle of their minds, separating competitors' secrets from their day-to-day contact with their employers' business and their day-to-day business decision-making. This type of metaphysical compartmentalization is beyond the power of any human being.

MCI/WorldCom Comments, p. 3 (emphasis added).

The Commission agreed with MCI. Although it indicated that, with appropriate safeguards, confidential information could be disclosed to in-house counsel, it refused "to allow in-house economists, analysts, or other in-house staff access to confidential

² Reply Comments of WorldCom, Inc. and MCI Communications Corporation, In re Applications of WorldCom, Inc. and MCI Communications Corp., CC Dkt No. 97-211, p. 2 (filed May 13, 1998) ("MCI/WorldCom Comments").

information” due to the “greater risk of inadvertent disclosure.”³ Since the Commission so recently decided this issue in the context of a large merger, SBC and Ameritech have proposed that it adopt the same rule in this case.

MCI’s claim that a different result is appropriate here can be dealt with quickly. First, it suggests that the documents to be covered by the protective order in this case require less protection than those in MCI/WorldCom. MCI Comments, p. 4. This contention is difficult to understand. In both cases, one of the primary reasons for the protective order is that the Commission, and hence other parties, will be afforded access to documents submitted by the applicants to the Department of Justice pursuant to its pre-merger review process under the Hart-Scott-Rodino Act. By statute, of course, such materials are entitled to extremely strict confidential treatment. See MCI/WorldCom Order, ¶ 3. In any event, given the combined entity’s plan to launch major competitive initiatives in the 30 largest markets outside its “in-region” territory, the sensitivity of the materials at issue here, and the need to avoid improper disclosure to competitors, is obvious.

³ Order Adopting Protective Order, In re Application of WorldCom, Inc. and MCI Communications Corp. for Transfer of Control of MCI Communications Corp. to WorldCom, Inc., CC Dkt No. 97-21, ¶ 5 (rel. June 5, 1998). MCI claims that the Commission issued the restriction on the use of in-house experts in MCI/WorldCom “without explanation.” MCI Comments, p. 2. This is not true. As noted, the Commission expressly stated that prohibiting access to in-house experts was necessary to avoid an undue risk of inadvertent disclosure. Moreover, since the Commission essentially adopted MCI’s rationale, it is spurious for MCI now to claim that the Commission acted without explanation.

Second, MCI notes that the “model” protective order that the Commission recently released does not contain the prohibition at issue here. MCI Comments, pp. 2-3. That order, however, was designed for use in a number of comparatively routine matters, such as licensing procedures, tariff proceedings, surveys and studies and other proceedings in which such limitations would not normally be necessary. The Commission nonetheless stated that in appropriate cases it would consider “limiting access to documents to outside counsel and experts so as to minimize the potential for inadvertent misuse of such information,” especially when “specific future business plans are involved.”⁴ This is precisely such a case; indeed, as set forth in the Applicants’ public interest statement, their future business plan for entry into 30 out of region markets – a plan which promises to transform the competitive landscape – is the driving force behind the merger. Given the extremely sensitive competitive nature of their plans, SBC and Ameritech are entitled to the same level of protection that was insisted upon and ultimately given to MCI.

Finally, notwithstanding the claim it made only three months ago that the in-house experts of the parties opposing the MCI/WorldCom merger could not possibly avoid inappropriate use of confidential information – that this would be “beyond the power of any human being” – MCI contends that its in-house economists have now developed that power. MCI Comments, p. 3. As the Commission correctly recognized in MCI/WorldCom, however, the risk of inadvertent disclosure of such highly confidential

⁴ In re Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission, ¶ 26, GC Dkt No. 96-55, (rel. Aug. 4, 1998).

information is too great to allow access to unspecified numbers of competitive personnel. Rather, as MCI stated in that proceeding, “it is eminently reasonable to require the commenters to undergo some additional expense, where necessary, to mitigate that risk,” especially since “independent telecommunications consultants are widely available.” MCI/WorldCom Comments, p. 4.

The Commission has already considered these issues after a full opportunity for interested parties to comment in the MCI/WorldCom proceeding and has attempted to balance the various competing interests. MCI’s request to upset that balance should be rejected, and the Commission should adopt the proposed protective order as written.⁵

⁵ MCI also mentions its “understanding” that the proposed protective order applies only to the “4(c)” documents submitted to the Department of Justice under the Hart-Scott-Rodino Act and suggests that an entirely new order will be necessary if other documents are submitted for Commission review. MCI Comments, p.4. The proposed order, however, by its terms, applies to all documents submitted by the Applicants to the Commission in connection with the merger. While MCI will, of course, be free to challenge the designation of any particular document as confidential and to seek the right to make additional disclosures pursuant to ¶¶ 2 and 6 of the protective order, its suggestion that there will have to be a new protective order (presumably requiring a new round of comments) for any additional submissions makes no sense.

CONCLUSION

For the foregoing reasons, SBC and Ameritech respectfully urge the Commission to reject MCI's objection and grant the proposed protective order.

Respectfully submitted,

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Dated: August 13, 1998

Certificate of Service

I, Peter J. Schildkraut, hereby certify that the foregoing Applicants' Response to Comments of MCI Telecommunications Corporation on Proposed Protective Order was served by first class mail, postage prepaid, on the following parties (except for Federal Communications Commission staff, who were served by hand) this 13th day of August, 1998.

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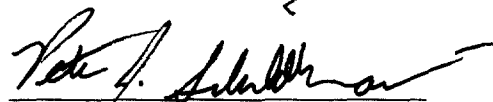
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